

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

Timothy B. Tyler	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Crim. No. 4:00-00359-01-CR-W-HFS
United States of America,	)	
	)	
Respondent.	)	

**ORDER**

On November 9, 2016, this Court granted Timothy B. Tyler’s motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. (Doc. 63). Tyler was entitled to sentencing relief under Johnson v. United States, 135 S.Ct. 2551 (2015), because the original imposed sentence enhancement pursuant to 18 U.S.C. § 924(e) of the Armed Career Criminal Act “ACCA” no longer qualifies him as an armed career criminal. The present issue does not, however, deal with correcting the original sentence, which has been fully served.

Pursuant to the direction of this Court, the government filed a sentencing memorandum on November 18, 2016. (Doc. 64). Pursuant to that memorandum, Tyler is currently serving a new 60-month term of imprisonment for violation of conditions of release. He has now served approximately 24 months for the violation. Because he has already served an enhanced sentence as an armed career criminal and now is no longer subject to designation as an armed career criminal, the Government concludes that the excessive time served as an armed career criminal on the underlying sentence should act as credit for the time he is now serving on the revocation sentence.

In another case, however, I expressed the view than any shortened sentence entitlement cannot be used as a credit against a later law violation – in this case a burglary. United States v. West, Case, No. 00-00099-01-CR-W-HFS (Doc. 74). This ruling, rejecting creation of a “time bank” that later violations can draw down to limit punishment for new violations, seems to be generally followed. See an Anders brief filed on October 3, 2016, in United States v. James, 2016 WL 6544166 (4th Cir.)(Appellant Brief, p 6-13, with citations).

Relief from the revocation sentence is therefore DENIED.

SO ORDERED.

/s/ Howard F. Sachs  
**HOWARD F. SACHS**  
UNITED STATES DISTRICT JUDGE

December 12, 2016

Kansas City, Missouri